UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,965	06/27/2001	Rick A. Hamilton II	AUS920010551US1	3809

7590	11/17/2005

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EXAMINER
LE, KHANH H

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/892,965	HAMILTON, RICK A.
	Examiner	Art Unit	
	Khanh H. Le	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *31 August 2005*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some *   c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   This Office Action is in response to Applicant's Response and Amendment dated
August 31, 2005. Claims 1-23 are now pending with claims 22-23 as new. Claims 1, 10, 19 are
independent.

Claim Rejections - 35 USC §101

2.   Following their amendments, previous rejections of claims 1-18 under 35 U.S.C.
101 are withdrawn.

Response to Arguments

3.   Applicants' challenge to the date of the reference "LEAVE INFORMATION,
Last Updated 8 May 00, Managing Your Leave: Questions and
Answers,http://www.nps.navy.mil/Code22/leave.htm#Refund%20for%20Unearned%20Leave,
herein referred to as FSL, is noted and persuasive. The previous rejection based on that reference
is withdrawn.

A new reference is now used, relating to the federal sick leave policy applied to the US
Air Force as of November 1999, titled **"Air Force Instruction 36-815, 1 November 1999,**
Personnel Absence and Leave, Compliance with this Publication is Mandatory",
http://web.archive.org/web/20000916190232/http://afpubs.hq.af.mil/pubfiles/af/36/afi36-
815/afi36-815.pdf , and published online as early as September 16, 2000, as evidenced by the
above link, dated back using the Wayback Machine at http://www.archive.org/web/web.php.
This reference will herein be referred to as AF Instruction 36-815.

At pages 18-19 of this document, it is disclosed advance sick leave is granted as a
privilege upon request and application by the employee. Advanced sick leave is automatically

liquidated through accrual of sick leave after the employee returns to work. Unliquidated sick leave is carried forward as a negative balance until liquidated by subsequent accrual. Upon leaving the employer, any unliquidated sick leave can be paid back as a charge against earned annual leave, salary, savings bonds balances or against retirement funds. Implicit is the employer's requirement of having access to the employee's funds or financial accounts to ensure proper repayment of the unliquidated sick leave. A probable time period for repayment is also contemplated . No advance is made in excess of possible accrual in case separation from employment is foreseeable (see paragraph 3.11. 2).

Thus AF Instruction 36-815 essentially discloses the same sick leave policy as the previously used reference, FSL.

As to Applicants' argument, at page 8, regarding "receiving an award request ", AF Instruction 36-815 discloses an employee requesting to receive an advance sick leave benefit or "award"(i.e. a request to enjoy the sick leave benefit of getting paid while not working because of illness) above the sick leave units that he/she had accrued based on his/her working time. Applicants argue that they did not equate an award request to receiving regular pay while on sick leave. This is irrelevant. The claimed term "award" reads on any type of award or reward or benefit and also reads on sick leave benefits.

As to Applicants arguments, at page 9, as to federal sick leave not being analogous art, they are unpersuasive. The federal government is concerned with attracting and/or retaining loyal customers (employees) and one device used is by giving them privileges (or benefits or rewards or awards) such as a generous sick leave policy allowing for advance leave against future sick leave earnings. This can be seen also as a reward program for valued employees (customers), similarly to Applicants' stated motive and problem, in order to retain them. Thus the federal advance sick leave model is reasonably pertinent to Applicants' problem and would be matter that would logically commend itself to the inventor's attention.

It is further noted that all facts Officially Noted in the previous Office Action and not challenged are taken as admitted. MPEP 2144.03.

Claim Rejections - 35 USC § 103

4.   The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5.   **Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over admitted art and Shida, US 2002/0087396 in view of "Air Force Instruction 36-815, 1 November 1999, Personnel Absence and Leave, Compliance with this Publication is Mandatory" http://web.archive.org/web/20000916190232/http://afpubs.hq.af.mil/pubfiles/af/36/afi36-815/afi36-815.pdf, herein "AF Instruction 36-815".**

As to claims 1-2, 4-5, 7-11, 13-14, and 16-21,

Loyalty points issuance and redemption for awards are admitted art (Specifications p. 1-2).   Further, Shida, cited in an earlier Office Action, discloses a computerized system for accumulation and redemption of loyalty points (see at least abstract).

The above references does not specifically disclose allowing an overdraft of points against future points earnings, requiring repayment if the earnings do not match the advanced redeemed points after a certain time, requiring that the customer meet certain criteria including requiring an ability for the business to have access to funds of the debtor if no repayment occurs as claimed.

However, AF Instruction 36-815 discloses that Sick Leave is earned and is redeemed (used) as needed. One can borrow sick leave against future earnings and has to repay them against earnings, or in cash if one quits before enough leave accumulates (see pages 18-19) .

Thus AF Instruction 36-815 discloses
A computerized (implicitly because computers are needed to process payrolls and sick leave accounts of the huge federal workforce) system ,method and a computer readable medium for providing awards to a customer (employee) comprising:

receiving an award request (a request for the award or benefit of actual days or parts thereof of pay while being off duty due to sickness) .

determining if the customer has a number of sick leave units (e.g. sick leave hours) to meet a predetermined number of sick leave units corresponding to the award (actual days or parts thereof of pay while being off duty due to sickness) request; and

authorizing a sick leave units overdraft if the customer has less than the predetermined number of sick leave units.

determining if the customer has accrued a number of sick leave units equal or greater than the sick leave units overdraft after a predetermined time period has elapsed (see pages 18-19: the determination is made, e.g. at separation from employment)

imposing a financial penalty on the customer if the customer has accrued less than the sick leave units overdraft on expiration of the predetermined time period (repay after expiration of employment period) .

wherein the financial penalty includes charging the customer for the price of the award (repay the value of the unliquidated sick leave balance, see pages 18-19)

and wherein the authorization of the rewards overdraft is based on customer criteria including a frequency of customer patronage (implicitly only qualified employees (also viewed as customers) who frequent the business (federal employment) regularly are allowed such benefits).

and wherein the customer criteria includes a customer authorization to debit a financial instrument (payroll account is debited for any amount due).

Sick leave units are analogous to points, redeemable for actual days or parts thereof of pay while being off duty due to sickness.

Here the federal Sick Leave policy of allowing borrowing against future earnings is **reasonably pertinent** to the particular problem with which the inventor was concerned. The federal employer wishes to attract, retain the best employees and secure their loyalty by providing the generous sick leave benefits as above-discussed. The commercial vendor has the same motivation to attract and retain loyal customers by providing advanced points as claimed. Thus the reference is analogous arts. See *In re Oetiker* , 24 USPQ2d 1443, 1445 (Fed. Cir. 1992) *"A prior art reference is **analogous** if the reference is in the field of applicant's endeavor or, if not, the reference is **reasonably pertinent** to the particular problem with which the inventor was concerned."*

Thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to allow borrowing points against future earnings (just as sick leave) in order to provide benefits to the newer members who haven't had time to accumulate the points (just as for sick leave (see excerpt below) and thereby win their loyalty.

All the other claimed features of borrowing against future points earnings, requiring repayment if the earnings do not match the advanced redeemed points after a certain time, requiring that the customer meet certain criteria including requiring an ability for the business to

have access to funds of the debtor if no repayment occurs, parallel the features disclosed in the reference.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add those features to the main claim to provide the balance of providing benefits to customers without thereby hurting the business financially, as implicitly taught by federal government sick leave policy of repayment, penalty (deducting pay due) in case of quitting, and ability to access the debtors' funds in case of no repayment.

As to claims 3 and 12,
the above cited references do not disclose wherein the time period is a range of about one day to about one year. However, Official Notice is taken that it is well-known for businesses to give free benefits for a predetermined period only in order to protect the business financially. For example, insurance companies would allow a grace period before canceling a policy when an insurer is late in paying premiums. It would have been obvious to one skilled in the art at the time the invention was made to add, to the main claim as disclosed by the above cited references, requiring repayment within one day to about one year, as the business circumstances dictate, to protect the business finances.

As to claims 6 and 15 (dependent on claims 4, 13 respectively) the above cited references do not disclose wherein the financial penalty includes charging the customer interest based on the price of the award. . However, Official Notice is taken that it is well-known for businesses to charge interest on loans in order to make profits. The points advanced are loans thus it would have been obvious to one skilled in the art at the time the invention was made to add such feature to the main claim to allow the business some profits.

As to claim 22, it is admitted art that points are issued for purchases from at least one company, e.g. an airline company (specifications at [008]).

As to claim 23, it is admitted art that some points are redeemable against rental car benefits (specifications at [004]) and thus a request for such award is implicitly admitted.

Conclusion

6.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
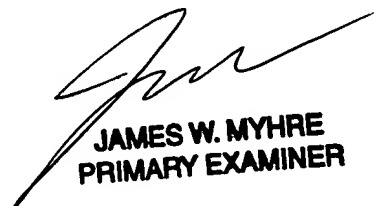
http://web.archive.org/web/*/http://afpubs.hq.af.mil/pubfiles/af/36/afi36-815/afi36-815.pdf discloses the online publication date of *"AF Instruction 36-815"*.

7.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khanh H. Le whose telephone number is 571-272-6721. The Examiner works a part-time schedule and can normally be reached on Tuesday-Wednesday 9:00-6:00.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-3600.

November 14, 2005

KHL

JAMES W. MYHRE
PRIMARY EXAMINER